

1 Andrew H. Wilson SBN 063209
2 WILSON, RYAN & CAMPILONGO
3 235 Montgomery Street
4 Suite 450
5 San Francisco, California 94104
6 (415) 391-3900
7 FAX: (415) 954-0938

8 Laurie J. Bartilson SBN 139220
9 BOWLES & MOXON
10 6255 Sunset Boulevard, Suite 2000
11 Hollywood, CA 90028
12 (213) 463-4395
13 FAX: (213) 953-3351

14 Attorneys for Plaintiff and
15 Cross-Defendant CHURCH OF
16 SCIENTOLOGY INTERNATIONAL

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF MARIN

19 CHURCH OF SCIENTOLOGY)
20 INTERNATIONAL, a California)
21 not-for-profit religious corporation;)

22 Plaintiffs,)

23 vs.)

24 GERALD ARMSTRONG; MICHAEL)
25 WALTON; et al.,)

26 Defendants.)

27 _____)
28 GERALD ARMSTRONG,)

29 Cross-Complainant,)

30 vs.)

31 CHURCH OF SCIENTOLOGY)
32 INTERNATIONAL, a California Corporation;)
33 DAVID MISCAVIGE;)
34 DOES 1 to 100;)
35 Cross-Defendants.)
36 _____)

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HUB LAW OFFICES

CASE NO. 157 680

CHURCH OF SCIENTOLOGY
INTERNATIONAL'S REPLY IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION, AS TO GERALD
ARMSTRONG'S SECOND
AMENDED CROSS-COMPLAINT

[C.C.P. 437c]

DATE: September 9, 1994
TIME: 9:00 a.m.
DEPT: 1

DISCOVERY CUT-OFF: Aug. 30,
1994
MOTION CUT-OFF: Sept. 13,
1994
TRIAL DATE: Sept. 29, 1994

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I. INTRODUCTION

Armstrong's opposition to cross-defendant Church of Scientology International's motion for summary judgment is comprised of such blatant twisting of facts and deliberate falsehood as to be sanctionable. He asserts, first, that the declaration filed by Mr. Miscavige in the Fishman case was an unprovoked, ad hominem "attack," not related to the litigation. He is only capable of asserting this by ignoring the fact -- undisputed -- that Armstrong had months earlier agreed to testify on behalf of one of the defendants in that case as an "expert" witness, and to testify about, inter alia, his claimed knowledge of "Scientology and its organizations ... structure, beliefs, practices, methods, personnel, conduct, behavior," etc. [Sep.St.No. 4.] The claimed "attack" is nothing more than a discussion of what Mr. Miscavige's testimony would have been concerning Armstrong's credibility and honesty, had he been permitted to testify. As demonstrated in the moving papers and below, these matters were placed at issue in the Fishman case by Armstrong and defendant Geertz -- not the Church or Mr. Miscavige.

Second, Armstrong asserts that the Church has abused process by violating a protective order in this case. Nothing could be farther from the truth. The protective order issued concerned very specific documents -- Armstrong's bank statements. [Exhibit 5a.] The Church has not supplied any of those documents to anyone -- indeed, the Church has not even had those documents to supply them to anyone: they have remained in the custody of the lawyers. [Exhibit 6, Declaration of Laurie J. Bartilson, ¶ 3 and Exhibit 7, Declaration of Andrew H. Wilson, ¶ 3.] Armstrong has deliberately given the Court only a partial copy of the information package, "Who is Gerald Armstrong?" which he claims comprised the violation. A full copy of that package demonstrates that the only information given to the press by the Church concerning this action was the Verified Complaint. [Exhibit 5b, pp. 200324-200339.] Nor did any Church representative ever testify otherwise.

1 Armstrong has completely twisted the deposition testimony of witness Lynn Farny,
2 trying desperately to create an issue of fact where none exists.

3 As demonstrated in the moving papers and below, the few remaining
4 allegations in Armstrong's cross-complaint are unsupported and completely without
5 merit. Summary judgment must be granted.

6 **II. ARGUMENT**

7 **A. Armstrong Has Failed To Demonstrate Any Issue Of Material Fact 8 Concerning The First Cause Of Action**

9 Armstrong's first cause of action is simple: he claims that it was an abuse
10 of process for non-party David Miscavige to file a declaration in a case entitled
11 Church of Scientology Int'l. v. Fishman, et al., No. CV 91-6426 HLH(Tx) (C.D.
12 Cal.) ("the Fishman case"), which contained a paragraph that "attacked"
13 Armstrong as a "liar." [Oppo. at 3.]¹ The Church's defense to this claim is also
14 simple, and conclusive: the declaration, which was not even filed by the Church, is
15 a communication which is absolutely privileged pursuant to Civil Code Section
16 47(b). Armstrong has raised not a single material fact which refutes this
17 conclusive defense. Instead, he has ignored the evidence presented by the Church
18 in its moving papers, and argued that the paragraph in Mr. Miscavige's declaration
19 was not privileged because it "did not have any logical relation to the proceeding."
20 [Oppo. at 6.] However, the evidence presented by the Church, and the additional
21 evidence presented by Armstrong, all support the opposite conclusion.

22 Civil Code Section 47 provides in relevant part that "A privileged publication
23 or broadcast is one made: . . . (b) In any judicial proceeding. . . ." This privilege
24 for publications in a lawsuit applies to all publications in judicial proceeding, so long
25 as the publication "(1) . . . was made in a judicial proceeding; (2) had some

26
27 ¹ While this motion was pending, Armstrong filed a Third Amended Cross-
28 complaint. As ordered, this document eliminates all of the stricken allegations and
retains those concerning which the Church seeks summary judgment herein.

1 connection or logical relation to the action; (3) was made to achieve the objects of
2 the litigation; and (4) involved litigants or other participants authorized by law."

3 Umansky v. Urquhart (1978) 84 Cal.App.3d 368, 371, 148 Cal.Rptr. 547.

4 Armstrong does not dispute that Mr. Miscavige's statements about Armstrong
5 were made in a judicial proceeding, and involved litigants or other participants
6 authorized by law. Rather, he attempts to dispute the logical relation of the
7 statements to the action. In this regard he fails to raise any issue of fact.

8 The undisputed evidence contained in the moving papers demonstrates that
9 both Armstrong and Mr. Miscavige were named as witnesses in the Fishman case.
10 [Sep.St. and Oppo.Sep.St.Nos. 4, 7.] It is equally undisputed that in December,
11 1993, defendant Uwe Geertz urged that Armstrong would offer relevant
12 testimony, as an expert witness, on the following subjects:

13 [H]is knowledge of L. Ron Hubbard and his successors, of
14 Scientology and its organizations, corporate and hierochial (sic)
15 structure, beliefs, practices, methods, personnel, conduct, behavior,
16 hierarchy, lexicon, activities, financing, financial activities, financial
17 misdealings, setups, dead agent files, suicides, attempted suicides,
18 history, criminal and/or alleged criminal conduct, the destruction of
19 documents/evidence by Scientology, dealings with the public, dealings
20 with former members, dealings with the press, dealings with the
21 judicial system, dealings with psychiatry and psychology
22 professionals, coercive methods, threats and directives to kill or
23 murder people, the "fair game" doctrine, litigation conduct and other
24 related or similar matters.

25 [Sep.St. and Oppo.Sep.St.No. 5.] The very listing of subjects demonstrates
26 Armstrong's hostility to the Church, and his intention to use the Fishman case as
27 yet another vehicle in which to spew his anti-Church diatribes.² Armstrong's
28 credibility and honesty as a witness were thus made issues in the case by
Armstrong himself and defendant Geertz -- not the Church.

29 ² It must be noted that the Fishman case was a simple libel action, and that the
30 Church considered that Armstrong's promised testimony would be both irrelevant
31 and prejudicial. Nonetheless, by offering him as an expert, hostile witness,
32 defendant Geertz placed Armstrong's honesty and credibility squarely at issue in
33 the action.

1 Not only did Mr. Miscavige's discussion of Armstrong's 1984 activities
2 relate directly to Armstrong's credibility and honesty, they also related directly to
3 the credibility of another of Geertz's "expert" witnesses: Armstrong's champion,
4 Vaughn Young.

5 Armstrong correctly asserts that Mr. Miscavige's declaration was filed in
6 support of a notice which asserted that "all discovery orders [in the Fishman case]
7 had been complied with." [Oppo.Sep.St. at p. 14.]³ The notice was filed by the
8 parties after their depositions had been ordered by the Magistrate, and defendant
9 Geertz had refused to schedule the depositions. [Ex. 5c, Declaration of William T.
10 Drescher filed in Fishman, ¶7-8.] The declaration of Mr. Miscavige was
11 accordingly submitted to the Court, in part, to show what his testimony would
12 have been had he been permitted to testify. [Ex. 2(A) to Opposition, p. 6.]
13 Because Mr. Miscavige had knowledge of facts which tended to show that
14 Armstrong should not be believed because he lacked honesty and credibility, and
15 Geertz and Armstrong had placed Armstrong's reputation for honesty and
16 credibility at issue in the case, those facts were included in the declaration. When
17 Armstrong himself agreed to testify for defendant Geertz, and to do so in a highly
18 inflammatory manner concerning his former religion, it is absurd for him to argue
19 that his credibility and honesty had no "logical relationship" to the Fishman
20 litigation. Armstrong struggles mightily in his opposing separate statement to
21 show that some or all of the facts about Armstrong asserted by Mr. Miscavige in
22 his declaration are in dispute. Even assuming arguendo that Mr. Miscavige's
23 statements can be challenged, such a challenge is irrelevant to the question of
24 whether or not the statements are privileged, and any dispute as to those

25
26 ³ Armstrong incorrectly asserts, however, that the notice was in support of
27 "Scientology's" position. "Scientology" was not a party to that motion, nor was
28 any Church of Scientology. The moving parties were third party witnesses David
Miscavige, Norman F. Starkey, Mark Rathbun and Greg Wilhere. [Exhibit 2(A) to
Greene's Declaration, p.1]

1 underlying facts is equally irrelevant. Williams v. Coombs (1986) 179 Cal.App.3d
2 626, 645, 224 Cal.Rptr. 865, 879. Similarly irrelevant are Armstrong's allegations
3 concerning Mr. Miscavige's motivation for filing the declaration. The requirement
4 that a statement be made in furtherance of the objects of the litigation "was never
5 intended as a test of a participant's motives, morals, ethics or intent." Shavar v.
6 Superior Court (1994) __ Cal.App.4th ___, 30 Cal.Rptr.2d 597, 598, quoting
7 Silberg v. Anderson (1990) 50 Cal.3d 764, 777, 234 Cal.Rptr. 653.

8 Younger v. Solomon (1974) 38 Cal.App.3d 289, 113 Cal.Rptr. 113, quoted
9 at length by Armstrong, is easily distinguishable. In Younger, the defendant,
10 Solomon, had propounded an interrogatory in a malpractice action which inquired
11 about (and attached) a complaint made about another attorney, Younger, to the
12 state bar. The interrogatory and its attachment thus disclosed information about
13 Younger which was otherwise confidential, according to the State Bar Rules. The
14 Court of Appeal found that the publication of the state bar complaint as an
15 attachment to an interrogatory had no logical connection to the action in which it
16 was propounded, and was not privileged.

17 Here, Mr. Miscavige filed a declaration, not an interrogatory. He was made
18 a witness, not by the Church, but by defendant Geertz. After Geertz refused to
19 take Mr. Miscavige's deposition in accordance with the Magistrate's order, Mr.
20 Miscavige reasonably filed a notice of compliance so that he would not be found in
21 contempt for Geertz's mistake, and included the testimony that he would have
22 given, had he been deposed, to ensure that his testimony would not be precluded
23 at trial. That testimony touched on many issues in the case that had been raised
24 by Geertz and his witnesses, all of which were a part of the case, and reasonably
25 anticipated to be part of the intended trial. [See Miscavige Declaration, Exhibit 1J
26 to Moving Papers.] One of those issues was Armstrong's credibility, and Mr.
27 Miscavige was entitled -- indeed, obligated -- to relate his personal knowledge
28 concerning that issue. In doing so, Mr. Miscavige did not disclose anything

1 confidential about Armstrong. He merely related Armstrong's own statements,
2 made on videotape, that he was not afraid of the Church, and that he was willing
3 and able to forge documents to facilitate an IRS raid of Church premises.⁴

4 "The privileged status of a particular statement . . . depends on its
5 relationship to an actual or potential issue in an underlying action." Financial Corp.
6 of America v. Wilburn (1987) 189 Cal.App.3d 764, 776, 234 Cal.Rptr. 653
7 (emphasis supplied). Armstrong was listed as an expert witness by Geertz; the
8 described subjects concerning which he was to testify consisted of his claimed
9 knowledge of alleged "bad acts" which he attributed to the Church. His credibility,
10 then, was both an "actual and potential" issue concerning which Mr. Miscavige
11 should have been free to comment without fear of retaliatory litigation. Defendant
12 Church is entitled to summary adjudication of this issue.

13 **B. Armstrong's Attempt To Persuade The Court That The Church**
14 **Disclosed Protected Documents Is A Sanctionable Fabrication**

15 Armstrong's second claim for abuse of process concerns discovery taken in
16 this action. Armstrong alleged that the Church obtained discovery concerning
17 Armstrong's financial records for an improper purpose. In his opposition to
18 summary judgment, he asserts that the Church obtained documents which were
19 covered by a protective order and distributed them to the media. This charge is
20 completely fabricated. The evidence, when viewed in its entirety rather than
21 piecemeal, demonstrates conclusively that no such violation occurred: no

22 ⁴ Armstrong makes an attempt in his separate statement to assert that the
23 videotapes referred to by Mr. Miscavige in his deposition were somehow
24 confidential.[Sep.Oppo. pp. 16-17.] However, the testimony cited by Armstrong
25 does not support this proposition, and the testimony which he has omitted to cite
26 to the Court demonstrates the opposite to be true. Mr. Farny testified that the
27 officer issuing the authorization had the authority to do so and that Police Chief
28 Gates attempted to "rewrite history" and revoke the authorization only after the
videotapes had been made public, and the IRS had threatened him. [Ex. 1A to
Armstrong's opposition papers (hereinafter "opposition"), 540:25 - 541:3; 541:19
- 543:2.] Mr. Farny also testified that the videotapes were put on the public
record in several cases, and sent to Congress. [Id., 543:9-21.]

1 documents produced in discovery have been distributed to the media, and no
2 documents given to counsel under protective order were distributed to a client.

3 The analysis must begin by a review of the only protective order in effect in
4 this case. The order concerns a very specific set of documents which were
5 produced by Armstrong and the Gerald Armstrong Corporation for an in camera
6 inspection by the referee on March 17, 1994. The protective order was placed on
7 the record by the referee on that date, and reads,

8 MR. BENZ: Back on the record. In connection with the
9 production of documents, Mr. Armstrong, through counsel, has
10 furnished documents that were in response to the second request for
11 the production of documents by defendant Armstrong, Numbers 14,
12 Number 14. And in response to the request, first request for the
13 production of documents by the Armstrong Corporation, items 4 dash,
14 item 14 and item 18.

15 Now, the documents produced are bank statements of Mr.
16 Armstrong's personal account at First Interstate Bank from 1990 to
17 1994 and they are Bates stamped 1 through 121, and statements of
18 the Armstrong Corporation at First Interstate Bank from 1990 to 1994
19 Bates stamped 122 to 172. These are the documents that were
20 produced. I will order them produced to Plaintiffs, but under a
21 protective order that they are to be used only for the purposes of this
22 litigation. And is there any further protective order you want, Mr.
23 Greene?

24 MR GREENE: Yes, only that I think that's adequate that they
25 are used only and specifically only in the course of and for purposes
26 restricted to use in this litigation.

27 MR. BENZ: That is so ordered. Do you want any limitation on
28 furnishing copies to the plaintiff itself, or should they be kept in the
possession of counsel?

MR. GREENE: Yes, I think further they should be kept in the
possession of counsel, of Mr. Wilson, and that copies are not to be
provided to any agency, or rather to the party, Church of Scientology
International, any of its employees or agents, directly or indirectly.

MR. BENZ: Any objection to that?

MR. WILSON: I don't have any objection to that. Except to
the extent that Mr. Greene considers that my co-counsel, Ms.
Bartilson is somehow not entitled to see these because she is --

MR. BENZ: Well, we will include her as counsel.

[Exhibit 5a, Transcript of Ruling Proceedings, March 17, 1994, 5:13-7:6]

Armstrong asserts correctly that the Church provided him, pursuant to his
discovery requests, with a document titled "Who is Gerald Armstrong?" He has
only provided the Court with a partial copy of the document, however. A copy of
the full document, which bears Bates stamps numbers 200298 through 200356, is

1 provided to the Court as Exhibit 5b hereto.⁵ Armstrong also correctly asserts that
2 the document was prepared for delivery to media inquiring about Armstrong,
3 although the witness referenced by Armstrong testified merely that the document
4 "may have" been given to the media -- he himself had no percipient knowledge of
5 any such delivery. Even assuming arguendo that the document was distributed to
6 the media, it still does not constitute a violation of the protective order in any way,
7 shape or form.

8 There is one statement in the document concerning this action, which is
9 quoted by Armstrong in his brief. [Oppo. at 6-7.] What Armstrong has omitted
10 from his brief is that the reader is thereafter referred to "SECTION 5" of the
11 information package -- documents which support the allegations made. [Ex. 5b,
12 200301.] "Section 5" consists entirely of the verified complaint in this action --
13 which was most certainly not obtained in discovery! [Id., 200323-200339.]

14 Armstrong also asserts that the Church's representative, Lynn Farny,
15 testified that "the source" of the allegations in the information package concerning
16 Michael Walton included documents produced in this case. In reality, Mr. Farny's
17 testimony was quite different. Walton asked Mr. Farny to identify the facts
18 forming the basis for a single statement in "Who is Gerald Armstrong?": "Walton
19 also knew of Armstrong's intention to breach the agreement and was thus fully
20 aware of the fraudulent nature of the conveyance." [Ex. 1A to opposition, 43:13-
21 22.] Mr. Farny responded that he knew that Walton knew that Armstrong

23 ⁵ Armstrong incorrectly titles the partial document, which he showed to Lynn
24 Farny at deposition, a "dead agent pack." Mr. Farny defined "dead agent pack" in
25 his deposition, as a slang term which springs from Sun Tzu's famous book, On
26 War. A "dead agent" was one discovered to be a source false information, and
27 hence not to be trusted in the future. A "dead agent pack" is a package of
28 information demonstrating that someone has been a source of false information.
[Ex. 1A to Opposition, Farny Deposition, 41:8-23] He also testified that the partial
document produced by Armstrong's lawyer in the deposition, and offered to the
Court again here, was not a "dead agent pack." [Id. 42:5-7]

1 intended to breach the agreement before the conveyances occurred, because Mr.
2 Farny had seen Walton attend proceedings in another case on Armstrong's behalf
3 in March of 1990 in which Armstrong's potential breach of the agreement was at
4 issue. [Id. 43:23 - 10.] He also stated that Armstrong had testified that Walton
5 knew about some of the breaches. [Id., 44:11-16.] Mr. Farny then testified that
6 the conclusion that Walton knew of the fraudulent nature of the conveyances
7 flowed from Walton's knowledge of the agreement's provisions, and Armstrong's
8 intentions to breach the agreement. [Id. 44:20 - 45:1.] Later in the deposition,
9 Walton asked Farny an open-ended question about any facts the Church was
10 aware of to support its theory that Walton was aware that Armstrong's
11 conveyance to him was fraudulent. Mr. Farny quite naturally responded that
12 discovery taken in the case also supported that conclusion. [Id. 46:17-22.]
13 Armstrong's juxtaposition of this varied testimony to try to support a conclusion
14 that the Church had improperly disclosed protected documents to the media is an
15 unconscionable, frivolous argument which warrants sanctions. C.C.P. § 1285.

16 Equally spurious is Armstrong's allegation that the protected documents
17 were distributed to Church staff. That conclusion certainly cannot be drawn from
18 the single document offered by Armstrong to support his theory: Mr. Farny's
19 declaration in support of this motion, Exhibit 4. Mr. Farny does not mention the in
20 camera, protected bank statements in his declaration at all. This is because he has
21 never seen them, nor have any of the Church's staff. [Exhibit 6, Declaration of
22 Laurie J. Bartilson, and Exhibit 7, Declaration of Andrew H. Wilson.] Only Church
23 counsel have copies of the documents, precisely as ordered by the referee. [Id.]
24 Thus, the evidence is undisputed that the Church has not violated the protective
25 order, and is entitled to summary adjudication of Armstrong's second abuse of
26 process claim as well as the first.

27 V. CONCLUSION

28 As demonstrated in the Moving Papers and herein, Armstrong has not

1 established a single issue of material fact to be decided on his remaining cross-
2 claims. They are meritless. This Court should grant summary judgment in favor of
3 the cross-defendant.

4 DATED: September 2, 1994

Respectfully submitted,

BOWLES & MOXON

6
7 By:



Laurie J. Bartilson

8
9 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

10 Attorneys for Plaintiff
11 and Cross-Defendant
12 CHURCH OF SCIENTOLOGY
13 INTERNATIONAL
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PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 235 Montgomery Street, Suite 450, San Francisco, California.

On September 2, 1994, I served the attached CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION, AS TO GERALD ARMSTRONG'S SECOND AMENDED CROSS-COMPLAINT; and CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION, AS TO GERALD ARMSTRONG'S SECOND AMENDED CROSS-COMPLAINT on the following in said cause, by placing for deposit with Lightning Express Messenger Service on this day in the ordinary course of business, true copies thereof enclosed in a sealed envelope. The envelope was addressed as follows:

Ford Greene, Esq.
HUB LAW OFFICES
711 Sir Francis Drake Blvd.
San Anselmo, California

Michael Walton
707 Fawn Dr.
San Anselmo, CA 94960

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on September 2, 1994



Colleen Y. Palmer